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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,723	01/02/2002	Bjarne Roenfeldt Nielsen	5636.210-US	6089

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EXAMINER

RAO, MANJUNATH N

ART UNIT PAPER NUMBER

1652

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/038,723

Applicant(s)

NIELSEN ET AL.

Examiner

Manjunath N. Rao, Ph.D.

Art Unit

1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 21 September 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 141-167 (as applied to elected species only).

Claim(s) objected to: _____.

Claim(s) rejected: 180,181,203,204,211,220,254 and 2443.

Claim(s) withdrawn from consideration: 168-179,182-202,205-210,212-219,221-242.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Manjunath N. Rao, Ph.D.
Primary Examiner
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Advisory Action

Claims 141-240, 242-254 are now currently pending in this application.

Applicant's request for reconsideration filed on 9-21-05 has been considered but NOT ENTERED, as it raises new issues and requires the Examiner to institute new rejection. The amendment has not been entered for the following reasons;

In response to the previous Office action, applicants have amended claim 254 and argue that claims are now in condition for an allowance. Examiner respectfully disagrees.

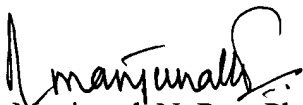
Examiner is aware that applicants elected position 402 as the species for examination and said amino acid remains unchanged. In the previous Office action Examiner indicated that since he could not find any art on the elected species, position 402 (except for the Double patenting rejection below), during his search and in accordance with the species election requirement, he randomly selected the next species for examination, the amino acids in positions 1-19, 21-25 and rejected the same under 35 U.S.C. 102 as anticipated by Allen et al. In response to said rejection applicants argued that Allen et al. does not teach the modification of amino acid 402 as applied to new claim 254 and therefore Allen et al. do not teach the claimed substitutions. In response, Examiner withdrew said rejection and randomly selected the next set of species for examination and rejected the same in the previous Office action and made it final.

In response to the previous final Office action, applicants have now filed the instant amendment in which they have cancelled all species except for amino acid positions 1-19, 21-25 and claim the same in claims 254-260 and 144-167 and argue that since these claims were indicated as allowable, all claims are in condition for allowance.

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Examiner respectfully disagrees. As argued by the applicants previously, claim 254 no longer includes the position 402 as one of the limitations. Therefore, claims 254-260 and 144-167 will have to be again rejected as anticipated by Allen et al. Examiner draws the attention of the applicant to the allowance statement that claims 144-167 are allowed to the extent of the elected species only, which is position 402. Without the inclusion of position 402, claims 254-260 and 144-167 are not in condition of allowance and will have to be rejected again. Since amendment of claim 254 has given rise to this new issue, Examiner has not entered the amendment filed on 9-21-05.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Manjunath N. Rao, Ph.D.
Primary Examiner
Art Unit 1652

September 29, 2005